

**O'Malley, Harris, Durkin & Perry, P.C.**

By: Michael P. Perry

I.D. No.: 36512

345 Wyoming Avenue

Scranton, PA 18503

Phone: (570) 348-3711

Fax: (570) 348-4092

E-Mail: [mperry@omalleyandharris.com](mailto:mperry@omalleyandharris.com)

Attorneys for Plaintiff

Aloysius T. Hughes

**Aloysius T. Hughes**  
**1003 Greenbrier Drive**  
**Clarks Summit, PA 18411**  
**Plaintiff**

**vs.**

**CITICARDS**  
**P.O. Box 183051**  
**Columbus, OH 43218**

**PHILLIPS & COHEN ASSOCIATES, LTD**  
**1002 Justison Street**  
**Wilmington, DE 19801**  
**Defendants**

**\* UNITED STATES DISTRICT COURT**  
**\* FOR THE MIDDLE DISTRICT**  
**\* OF PENNSYLVANIA**

**\* CIVIL ACTION - LAW**

**\* ELECTRONICALLY FILED**

**\* NO. 10-1859-WJN**  
**\* Judge William Nealon**

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**NOTICE**

**YOU HAVE BEEN SUED IN COURT.** If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

**Lackawanna County Bar Assoc.**  
**Lawyer Referral Service**  
**338 N. Washington Ave., 3<sup>rd</sup> Fl.**  
**Scranton, PA 18503**  
**Phone: (570) 969-9600**

**Pa. Lawyer Referral Service**  
**Pa. Bar Association**  
**P.O. Box 186**  
**Harrisburg, PA 17108**  
**Pa. Residents (800) 692-7375**  
**Out of State Residents:**  
**(717) 238-6715**

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*Attorneys for Plaintiff*

*Aloysius T. Hughes*

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**Aloysius T. Hughes**

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**Clarks Summit, PA 18411**

**Plaintiff**

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**CITICARDS**

**P.O. Box 183051**

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**Defendants**

**\* UNITED STATES DISTRICT COURT**

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**AMENDED COMPLAINT**

AND NOW, the Plaintiff, Aloysius T. Hughes, by and through his attorneys, O'Malley, Harris, Durkin, & Perry, P.C. complains against the Defendant as follows:

1. The Plaintiff, Aloysius T. Hughes, is a competent adult individual residing at 1003 Greenbrier Drive, Clarks Summit, Lackawanna County, Pennsylvania.
2. The Defendant, Citicards, is a corporation with a principal place of business in Columbus, Ohio.
3. The Defendant, Phillips & Cohen Associates, LTD, is a financial recovery and collections company with a corporate headquarters located at 1002 Justinson Street, Wilmington, Delaware.

4. In January, 1986, the Plaintiff's mother, Marion A. Hughes, opened a credit card account with CitiCards bearing the account number 5491 4920 1449 0548.

5. Marion A. Hughes passed away in 2006 without assets.

6. Since her death, the Plaintiff, Aloysius Hughes, has continued to receive statements regarding the aforementioned account. (See Exhibit A attached to the Complaint)

7. On multiple occasions it was brought to the attention of Citicards that Marion Hughes had passed away without assets, and that Aloysius Hughes was not a party responsible for payment of the balance of Marion Hughes' account with CitiCards.

8. The aforementioned account was classified as delinquent and turned over to at least one (1) collection agency, Phillips and Cohen Associates, LTD.

9. Defendant, Phillips and Cohen Associates, LTD., were notified that Marion Hughes had passed away, and Plaintiff, Aloysius Hughes requested that further statements cease from being sent to him. (See Exhibit B attached to the Complaint)

10. On January 5, 2010, Plaintiff requested and received his credit report.

11. On the credit report of Plaintiff, Aloysius Hughes, was Marion Hughes' CitiCard account, listed as delinquent, and showing an outstanding balance of \$18,226.00 with an Annual Percentage Rate of 32.24%.

**COUNT I: INTENTIONAL MISREPRESENTATION v. CITICARDS**

12. §602 of the Fair Credit Report Act states that the banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the

*banking system...it is the purpose of this title to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this title.*

13. §632 (a) (1) (A) of the Fair Credit Reporting Act states that a person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.

14. Additionally, §632 (a) (1) (B) of the Fair Credit Reporting Act states that a person shall not furnish information relating to a consumer to any consumer reporting agency if: (i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate and (ii) the information is, in fact, inaccurate..

15. Intentional misrepresentation, or fraud, contains three elements: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance. Gibbs v. Ernst, 538 Pa. 193, 207; 647 A.2d 882 (1994).

16. Defendants were both notified by Plaintiff, Aloysius Hughes, that the account in question belonged to his late mother, yet Defendant, Citicards continued to send Plaintiff bills for the account, and telephone him repeatedly about a past-due account. By continuing to send bills, and by reporting false information to a credit reporting

agency, Defendant Citicards made a material representation that Plaintiff, Aloysius Hughes, was responsible for a delinquent account. This representation was false, as Mr. Hughes was not the owner of this account, and the true owner, his late mother, passed away without an estate. Citicards made this representation after having reason to know that it was false, with the intent of misleading the recipient of that information into trying to collect a debt from a party who did not owe that debt. The recipient was misled and justifiably relied on such information to decrease the Plaintiff's credit score, and cause him undue damages. Plaintiff's damages were caused by the reliance on the false credit information and the reporting of that information to a credit reporting agency.

17. Defendants Citicards turned the account over to Defendant, Phillips & Cohen Collection Agency, and supplied negative information to a credit reporting company willfully, egregiously, and intentionally, to cause negative consequences to Mr. Hughes.

18. Those consequences included decline in credit rating, leading to damages for mental suffering, and financial struggle, due to the egregious conduct on behalf of the defendants..

19. Further, § 616(a) of the Fair Credit Reporting Act imposes civil liability for willful noncompliance, and says any person who willfully fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 or more than \$1000; or in the case of liability of a natural person for obtaining a consumer report

*under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure of \$1000, whichever is greater; such amount of punitive damages as the court may allow; and in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.*

20. *Solely, as a result of the negligence and carelessness of the Defendants in reporting credit information which was known to be false, the Plaintiff, Aloysius Hughes has experienced a decline in his credit rating.*

21. *As a result of the carelessness and negligent conduct of the Defendants and caused solely thereby, Plaintiff has been deprived of life's pleasures, has sustained an interruption in lifestyle and suffered embarrassment and humiliation, discomfort, inconvenience, and distress, which are continuing in nature.*

22. *As a result of the carelessness and negligent conduct of the Defendants and caused solely thereby, the Plaintiff has incurred various and substantial damages his credit score, which has caused financial struggle.*

**COUNT II: INTENTIONAL MISREPRESENTATION v.**

**PHILLIPS AND COHEN ASSOCIATES, LTD.**

23. *§807 of the Fair Debt Collection Practices Act, entitled False or Misleading Representations, states that a debt collector may not use false, deceptive, or misleading representation or means in connection with the collection of any debt. Specifically, §807(8) states that "Communicating or threatening to communicate to any person credit information which is known or which should be known to be false" is a violation of the Fair Debt Collection Practices Act 16.*

24. *Intentional misrepresentation, or fraud, contains three elements: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance. Gibbs v. Ernst, 538 Pa. 193, 207; 647 A.2d 882 (1994).*

25. *Defendant, Phillips and Cohen Associates was notified by Plaintiff, Aloysius Hughes, that the account in question belonged to his late mother, yet Defendant continued to contact him trying to collect on the account.. By continuing to attempt collection, and by reporting false information to a credit reporting agency, Defendant Phillips and Cohen Associates, LTD., made a material representation that Plaintiff, Aloysius Hughes, was responsible for a delinquent account. This representation was false, as Mr. Hughes was not the owner of this account, and the true owner, his late mother, passed away without an estate. Phillips and Cohen Associates, LTD., made this representation after having reason to know that it was false, with the intent of misleading the recipient of that information into trying to collect a debt from a party who did not owe that debt. The recipient was misled and justifiably relied on such information to decrease the Plaintiff's credit score, and cause him undue damages. Plaintiff's damages were caused by the reliance on the false credit information and the reporting of that information to a credit reporting agency.*

26. *Defendants, Phillips & Cohen Associates, LTD, provided negative information to a credit reporting company willfully, egregiously, and intentionally, to cause negative consequences to Mr. Hughes.*

27. *Those consequences included decline in credit rating, leading to damages for mental suffering, and financial struggle, due to the egregious conduct on behalf of the defendants..*

28. *As a result of the negligence and carelessness of the Defendants in reporting credit information which was known to be false, the Plaintiff, Aloysius Hughes has experienced a decline in his credit rating.*

29. *§813 of the Fair Debt Collection Practices Act, entitled Civil Liability, provides that any debt collector who fails to comply with any provision of the Fair Debt Collection Practices Act is liable to such person.*

30. *As a result of the carelessness and negligent conduct of the Defendants and caused solely thereby, Plaintiff has been deprived of life's pleasures, has sustained an interruption in lifestyle and suffered embarrassment and humiliation, discomfort, inconvenience, and distress, which are continuing in nature.*

31. *As a result of the carelessness and negligent conduct of the Defendants and caused solely thereby, the Plaintiff has incurred various and substantial damages his credit score, which has caused financial struggle.*

### **COUNT III: HARRASSMENT**

32. *After being informed that Marion Hughes had passed away with no estate, and that Aloysius Hughes was not responsible for the account in question, Defendants continued to harass Plaintiff, through repetitive telephone calls demanding payment on the account.*

33. *Under Pennsylvania law, a person commits the crime of harassment when, with intent to harass, annoy, or alarm another, the person engages in a course of*



*conduct or repeatedly commits acts which serve no legitimate purpose; or communicates repeatedly in another manner.*

*34. After learning from the Plaintiff that Marion Hughes was deceased, and that Aloysius Hughes was not responsible for her account, defendants had no legitimate purpose in the continuous telephone calls that were made to Plaintiff in demand of payment, yet they did not cease.*

**COUNT IV: PUNITIVE DAMAGES**

*35. In continuing to report negative credit information after being made aware that it was false, the defendants have acted in an egregious and outrageous fashion due to their reckless indifference to the rights of others, specifically, Plaintiff, Aloysius Hughes, and therefore, punitive damages are appropriate.*

*WHEREFORE, the Plaintiff, Aloysius Hughes, demands judgement on the foregoing cause of action in excess of jurisdictional limits.*

O'Malley, Harris, Durkin & Perry, P.C.  
Attorneys for the Plaintiff,  
Aloysius Hughes

By: /s/ Michael P. Perry  
Michael P. Perry  
I.D. No.: 36512

345 Wyoming Avenue  
Scranton, PA 18503  
(570)348-3711

# EXHIBIT A

08/28/06 \$18708.40 \$1484.61

SITE:KC-CL TM:CO-5000 ACID:KCB3076  
 06/24/08 20:38:32:

MARION A HUGHES  
 1003 GREENBRIAR DR.  
 CLARKS SUMMIT  
 18411-1607000

PA

CITI CARDS  
 PO BOX 183051  
 COLUMBUS, OH  
 43218-3051

# Citi® Platinum Select® Card



Account Number  
 5491 4920 1449 0548

Customer Service  
 1-800-983-6453

PO Box 44167  
 Jacksonville, FL  
 32231-4167

Total Credit Line	Available Credit Line	Cash Advance Limit	Available Cash Limit	New Balance
\$25000	\$0	\$25000	\$0	\$18708.40
Statement/ Closing Date	Amount Over Credit Line	Past Due	Purch/Adv Minimum Due	Minimum Amount Due
08/02/2006	\$0.00 +	\$991.60 +	\$493.01 =	\$1484.61

Sale Date	Past Due	Reference Number	Activity Since Last Statement	Amount
8/02			Standard Purch	39.00
8/02			LATE FEE - JUL PAYMENT PAST DUE	70000000000
8/02			66 0000	232.64
8/02			PURCHASES*FINANCE CHARGE*PERIODIC RATE	70000000000
8/02			84 0000	
8/02			Balance Transfer - Charged To Offer 7	255.37
8/02			PURCHASES*FINANCE CHARGE*PERIODIC RATE	70000000000
8/02			84 0000	

Your late fee was based on your account balance as of the payment due date (07/27/06), which was \$18,181.39.

Your account is past due. Please pay the Minimum Amount Due shown. Remember, regular monthly payments will help establish a good payment history with us. If you have already sent us this payment, thank you.

Our records show home phone 570-346-3498 and business phone 570-586-8353. Please update coupon if incorrect.

Account Summary	Previous Balance	(+) Purchases & Advances	(-) Payments & Credits	(+) FINANCE CHARGE	(=) New Balance
PURCHASES	\$18,181.39	\$39.00	\$0.00	\$488.01	\$18,708.40
ADVANCES	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL	\$18,181.39	\$39.00	\$0.00	\$488.01	\$18,708.40

Days This Billing Period: 30

Rate Summary	Balance Subject to Finance Charge	Periodic Rate	Nominal APR	ANNUAL PERCENTAGE RATE
PURCHASES				
Standard Purch	\$8,779.29	0.08833%(D)	32.240%	32.240%
Offer 7	\$9,636.89	0.08833%(D)	32.240%	32.240%
ADVANCES				
Standard Adv	\$0.00	0.08833%(D)	32.240%	32.240%

09/26/06 \$18226.34 \$968.55

SITE:KC-CL TM:CO-5000 ACID:KCB3076  
06/24/08 20:38:32:

MARION A HUGHES  
1003 GREENBRIAR DR.  
CLARKS SUMMIT  
18411-1607000

PA

CITI CARDS  
PO BOX 183051  
COLUMBUS, OH  
43218-3051

## Citi® Platinum Select® Card



Account Number  
5491 4920 1449 0548

**Customer Service:**  
1-800-983-6453  
PO Box 44167  
Jacksonville, FL  
32231-4167

Total Credit Line	Available Credit Line	Cash Advance Limit	Available Cash Limit	New Balance
\$25000	\$0	\$25000	\$0	\$18226.34
Statement/ Closing Date	Amount Over Credit Line	Past Due	Purch/Adv Minimum Due	Minimum Amount Due
09/01/2006	\$0.00 +	\$484.61 +	\$483.94 =	\$968.55

Sale Date	Post Date	Reference Number	Activity Since Last Statement	Amount
	8/07	81794100	Payments, Credits & Adjustments PAYMENT THANK YOU 70 0000 0 0	-1,000.00 70000000000
	9/01		Standard Purch LATE FEE - AUG PAYMENT PAST DUE 66 0000 0	39.00 70000000000
	9/01		PURCHASES*FINANCE CHARGE*PERIODIC RATE 84 0000 0	228.65 70000000000
	9/01		Balance Transfer - Charged To Offer 7 PURCHASES*FINANCE CHARGE*PERIODIC RATE 84 0000 0	250.29 70000000000

Your late fee was based on your account balance as of the payment due date (08/28/06), which was \$17,708.40.

Your account is past due. Please pay the Minimum Amount Due shown. Remember, regular monthly payments will help establish a good payment history with us. If you have already sent us this payment, thank you.

Account Summary	Previous Balance	(+) Purchases & Advances	(-) Payments & Credits	(+) FINANCE CHARGE	(=) New Balance
PURCHASES	\$18,708.40	\$39.00	\$1,000.00	\$478.94	\$18,226.34
ADVANCES	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL	\$18,708.40	\$39.00	\$1,000.00	\$478.94	\$18,226.34

Days This Billing Period: 30

Rate Summary	Balance Subject to Finance Charge	Periodic Rate	Nominal APR	ANNUAL PERCENTAGE RATE
PURCHASES	\$8,628.58	0.08833%(D)	32.240%	32.240%
Standard Purch	\$9,445.12	0.08833%(D)	32.240%	32.240%
ADVANCES	\$0.00	0.08833%(D)	32.240%	32.240%
Standard Adv				

08/27/07 \$18226.34 \$18226.34

SITE:KC-CL TM:CO-5000 ACID:KCB3076  
 06/24/08 20:38:32:

MARION A HUGHES  
 ATTNY ACCOUNT-CODE=MP66  
 CLARKS SUMMIT  
 18411-1607000

PA

CITI CARDS  
 PO BOX 183051  
 COLUMBUS, OH  
 43218-3051

# Citi® Platinum Select® Card



Account Number  
 5491 4920 1449 0548

Customer Service:	Total Credit Line	Available Credit Line	Cash Advance Limit	Available Cash Limit	New Balance
1-800-983-6453	\$25000	\$0	\$25000	\$0	\$18226.34
PO Box 44167	Statement/ Closing Date	Amount Over Credit Line	Past Due	Purch/Adv Minimum Due	Minimum Amount Due
Jacksonville, FL 32231-4167	08/02/2007	\$0.00	\$4808.55	\$384.00	\$18226.34
Sub Date	Post Date	Reference Number	Activity Since Last Statement		Amount

Help is available! Please call the toll-free number shown above to learn about our special payment options. Call Monday - Friday, 7 am to 9 pm, or Saturday, 8 am to 5 pm, Central Time. Please give us the opportunity to assist you.

Our records show home phone 570-346-3498 and business phone 570-586-8353. Please update coupon if incorrect.

Account Summary	Previous Balance	(+) Purchases & Advances	(-) Payments & Credits	(+) FINANCE CHARGE	(=) New Balance
PURCHASES	\$18,226.34	\$0.00	\$0.00	\$0.00	\$18,226.34
ADVANCES	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL	\$18,226.34	\$0.00	\$0.00	\$0.00	\$18,226.34
Days This Billing Period: 31					
Rate Summary	Balance Subject to Finance Charge	Periodic Rate	Nominal APR	ANNUAL PERCENTAGE RATE	
PURCHASES					
Standard Purch	\$0.00	0.08833%(D)	32.240%		32.240%
Offer 7	\$0.00	0.08833%(D)	32.240%		32.240%
ADVANCES					
Standard Adv	\$0.00	0.08833%(D)	32.240%		32.240%

09/26/07 \$18226.34 \$18226.34

SITE:KC-CL TM:CO-5000 ACID:KCB3076  
 06/24/08 20:38:32:

MARION A HUGHES  
 ATTN: ACCOUNT-CODE=MP66  
 CLARKS SUMMIT  
 18411-1607000

PA

CITY CARDS  
 PO BOX 183051  
 COLUMBUS, OH  
 43218-3051

## Citi® Platinum Select® Card



Account Number  
 5491 4920 1449 0548

<b>Customer Service:</b> 1-800-983-6453	Total Credit Line \$25000	Available Credit Line \$0	Cash Advance Limit \$25000	Available Cash Limit \$0	New Balance \$18226.34
PO Box 44167 Jacksonville, FL 32231-4167	Statement/ Closing Date 09/03/2007	Amount Over Credit Line \$0.00	Past Due \$5192.55	Purch/Adv Minimum Due \$384.00	Minimum Amount Due \$18226.34
Sale Date Post Date Reference Number Activity Since Last Statement					Amount

Help is available! Please call the toll-free number shown above to learn about our special payment options. Call Monday - Friday, 7 am to 9 pm, or Saturday, 8 am to 5 pm, Central Time. Please give us the opportunity to assist you.

Account Summary	Previous Balance	(+) Purchases & Advances	(-) Payments & Credits	(+) FINANCE CHARGE	(=) New Balance
PURCHASES	\$18,226.34	\$0.00	\$0.00	\$0.00	\$18,226.34
ADVANCES	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL	\$18,226.34	\$0.00	\$0.00	\$0.00	\$18,226.34
Days This Billing Period: 32					
Rate Summary	Balance Subject to Finance Charge	Periodic Rate	Nominal APR	ANNUAL PERCENTAGE RATE	
PURCHASES					
Standard Purch	\$0.00	0.08833%(D)	32.240%		32.240%
offer 7	\$0.00	0.08833%(D)	32.240%		32.240%
ADVANCES					
Standard Adv	\$0.00	0.08833%(D)	32.240%		32.240%

# EXHIBIT B

LAW OFFICES  
*O'Malley, Harris, Durkin & Perry, P.C.*

JOHN Q. DURKIN  
DANIEL MORGAN, C.P.C.U.  
MICHAEL P. PERRY  
RICHARD K. HODGES  
GERALD J. HANCHULAK  
MATTHEW P. BARRETT  
BRUCE L. COYER  
JOHN F. KENNEDY  
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345 WYOMING AVENUE  
SCRANTON, PENNSYLVANIA 18503  
(570) 348-3711  
FAX (570) 348-4092  
E-MAIL: info@omalleyandharris.com

July 2, 2008

*Phillips & Cohen Associates  
Attn: Lynette Carroll  
358 Chapman Road, Suite 205  
Newark, DE 19702*

**RE: MARION A HUGHES  
CITY CARDS  
A/C 5491 4920 1449 0548**

Dear Ms. Carroll:

*Statements regarding this account continue to be forwarded to my client Aloysius T. Hughes. Marion A. Hughes was his mother, however, she passed away in 2006 without assets. I have advised my client that he is not responsible to pay this account and I request at this time that you cease and desist from forwarding further statements to his address. If you wish to discuss this matter, please contact me at your convenience.*

Very truly yours,

O'Malley, Harris, Durkin & Perry, P.C.

*151 Michael P. Perry*  
Michael P. Perry

MPP:mes  
cc: Al T. Hughes



**O'Malley, Harris, Durkin & Perry, P.C.**

By: Michael P. Perry

I.D. No.: 36512

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Attorneys for Plaintiff

Aloysius T. Hughes

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**Plaintiff**

**VS.**

**CITICARDS**  
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**1002 Justison Street**  
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**Defendants**

**\* UNITED STATES DISTRICT COURT**  
**\* FOR THE MIDDLE DISTRICT**  
**\* OF PENNSYLVANIA**

**\* CIVIL ACTION - LAW**

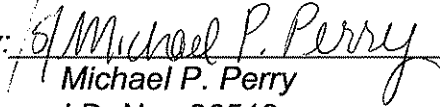
**\* ELECTRONICALLY FILED**

**\* NO. 10-1859-WJN**  
**\* Judge William Nealon**

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**VERIFICATION**

I, Michael P. Perry, attorney for the Plaintiff in the foregoing action, hereby verify that the statements contained in the foregoing Second Amended Complaint, are true and correct to the best of my knowledge, information, and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

By:   
Michael P. Perry  
I.D. No.: 36512

Date: 1-7-11